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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	CASE NO. CR 23-00270-TLT
Plaintiff,	
v.	UNITED STATES' SENTENCING MEMORANDUM
JAY YOON SONG,	
Defendant.	

I.   INTRODUCTION

The defendant Jay Song is scheduled to be sentenced on April 25, 2025. He entered a guilty plea to Count One of the Superseding Information pursuant to a Plea Agreement on November 17, 2023. Dkt. 47 & 48. Count One is a money laundering charge related to the proceeds of a mail fraud scheme in which the defendant Song participated. *See* Dkt. 42 (Superseding Information).

For the reasons set forth below, the United States requests that the Court sentence the defendant Song to a time-served custodial sentence and impose a three-year term of supervised release with the conditions recommended by the Probation Office in the PSR, including 100 hours of community service. In addition to being ordered to pay the $100 special assessment, Song should be ordered to pay

1   restitution to Mercury Insurance Corporation ("Mercury") in the amount of $44,475.76. In light of its

2   request for restitution, the government does not recommend that the Court impose a fine.

3   **II.   OFFENSE CONDUCT**

4   The defendant Song and his co-conspirator Kirill Afanasyev participated in a scheme to defraud

5   Mercury with respect to an insurance claim submitted to Mercury regarding a BMW 430i (the "BMW").

6   That fraudulent insurance claim was one in a long series of similar schemes orchestrated by Afanasyev

7   in which numerous individuals submitted fraudulent automobile insurance claims. [1] Indeed, prior to

8   engaging in the criminal conduct in this case, Song himself was introduced to Afanasyev's fraud scheme

9   through his participation in a scheme to defraud Mercury concerning a wrecked 2017 Cadillac XTS (the

10 "Cadillac") titled in Song's name and insured by Song. *See* PSR, ¶ 10.

11   Afanasyev purchased the BMW through an auction house named Manheim in April 2018. At the

12 time, the BMW had suffered heavy front-end damage, it was undriveable, and it had a non-functioning

13 engine. Photographs of the BMW as it then appeared are set out below:

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26   [1] As detailed in the PSR, this case is related to six other cases before this Court involving ten
    other defendants (two of whom were charged in two cases each). *See* PSR, at 2 (listing the following as
27 related cases *U.S. v. Afanasyev, Loggins, & Sarser*, No. 3:23-CR-00042-TLT/WHO; *U.S. v. Jackson*,
    No. 3:23-CR-00236-TLT; *U.S. v. Kravchenko*, 3:24-CR-00049-TLT; *U.S. v. Badillo and Najarro*, 3:24-
28 CR-00382-TLT; *U.S. v. Afanasyev, Badillo, Naraja, & Respicio*, 3:24-CR-00471-TLT; *U.S. v.
    Meleshinsky*, No. 3:24-CR-00483-TLT).

1   The BMW's condition would not have been apparent to an insurer because its true condition was not

2   listed in databases such as Carfax[2] and because the title in place at the DMV was a normal title in the

3   name of the BMW's prior owner (rather than a "salvage title" or "salvage certificate"[3]).

4   Records from Mercury show that the defendant Song obtained an insurance policy for the BMW

5   on May 15, 2018. Song paid premiums on the policy out of his bank account from May until October

6   2018.

7   On July 16, 2018 (that is, two months after Song obtained insurance from Mercury), DMV

8   records memorialize Song's "purchase" of the BMW, allegedly for $14,500. In truth, Song did not pay

9   any money for the purchase of the car.

10   On August 31, 2018, an insurance claim was filed with Mercury, in which it was claimed that

11   Song had been in a single-car accident in the BMW in which he was at fault. In adjudicating the claim, a

12   Mercury adjuster examined the vehicle and took photographs of it. Photographs provided to the

13   government by Mercury show that the car was in essentially the same condition as when Afanasyev

14   obtained it from Manheim.

21   On September 11, 2018, Mercury issued a check to Song for $47,147.51. On September 17,

22   2018, the defendant Song deposited that check into his Bank of America account. PSR, ¶ 7. Then, on

23   October 11, 2018, Song made a cash withdrawal of $30,101.79. *Id.*, ¶ 8. The funds in that withdrawal

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[2] Carfax provides data on automobiles to individuals and businesses, typically through a Carfax Vehicle History Report. Such reports "provide information about the number of owners a used car has had, accidents it has been in, title issues, whether it was a fleet vehicle, and its maintenance record, among other aspects of its history." https://en.wikipedia.org/wiki/Carfax_(company)

[3] A salvage certificate is issued by the DMV (instead of an ownership certificate) when a car is declared a total loss and a party seeks a salvage certificate from the DMV. *See* https://www.dmv.ca.gov/portal/handbook/vehicle-industry-registration-procedures-manual-2/salvage-nonrepairable-junk-vehicles/salvage-certificate/

1 consisted in large part of the ill-gotten gains obtained from Mercury, providing the basis for the count to

2 which the defendant Song has pleaded guilty.

3   Based on the total amount of money paid out by Mercury (as in, the claim payment, rental car

4 fees, towing and storage fees), offset by amounts such as the money Mercury received for sale of the

5 BMW ($4,900), Mercury suffered a net loss of $44,475.76 from the scheme to defraud involving the

6 BMW. *See* PSR, ¶ 11. The Court should use this amount to calculate the restitution owed to Mercury.

7   This fraud scheme, like many of the schemes charged in the related cases, was not identified by

8 the defrauded insurance company but only came to light through the FBI's and IRS-CI's investigation.

9 **III.   GUIDELINES CALCULATION**

10   The Parties are in agreement about the Guidelines Calculation. The applicable provision for the

11 money laundering offense is U.S.S.G. § 2S1.1, which cross references U.S.S.G. § 2B1.1 in determining

12 the base offense level, which provides for a base offense level of 6. *See* §§ 2S1.1(a)(1) and 2B1.1(a)(2).

13 Based on the net loss to Mercury resulting from the schemes to defraud involving the BMW and the

14 Cadillac (which is included as relevant conduct), the offense level should be increased by six levels. *See*

15 § 2B1.1(b)(1)(D). The adjusted offense level of 12 from Section 2B1.1 should then be used to calculate

16 the base offense level in U.S.S.G. § 2S1.1(a)(1). Because the money laundering conviction is under 18

17 U.S.C. § 1957, one additional point is added, for a total offense level of 13. U.S.S.G. § 2S1.1(b)(2). Two

18 points are subtracted for acceptance of responsibility and an additional two points are subtracted because

19 the defendant is a "zero-point" offender. Accordingly, the final offense level is level 9 (PSR, ¶ 9), and

20 the advisory Guidelines range is four to 10 months (Zone B).

21 **IV.   SENTENCING RECOMMENDATION**

22   The overarching goal of a sentencing court is to impose a sentence that is sufficient to "reflect

23 the seriousness of the offense, promote respect for the law, and provide just punishment; to afford

24 adequate deterrence; to protect the public; and to provide the defendant with needed education or

25 vocational training, medical care, or other correctional treatment." *United States v. Ressam*, 679 F.3d

26 1069, 1088-89 (9th Cir. 2012) (en banc) (quotation omitted); 18 U.S.C. § 3553(a)(2). The Court should

27 begin the sentencing process by correctly calculating the applicable Guidelines range and must "remain

28 cognizant of them throughout the sentencing process." *Gall v. United States*, 552 U.S. 38, 50 n.6

1   (2007). The Court should then consider the factors outlined in 18 U.S.C. § 3553(a) to determine the

2   appropriate sentence. *Ressam*, 679 F.3d at 1089. If the Court determines that a sentence outside of the

3   Guidelines range is warranted, it must ensure that the ''justification is sufficiently compelling to support

4   the degree of the variance." *Id.* (quotation omitted). "[A] major departure should be supported by a

5   more significant justification than a minor one." *Gall*, 552 U.S. at 50.

6   The factors the Court should consider in determining the appropriate sentence include:

7   •   The nature and circumstances of the offense, and the history and characteristics of
          the defendant;

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9   •   The need for the sentence imposed to reflect the seriousness of the offense, to
          promote respect for the law, and to provide just punishment for the offense; to
          afford adequate deterrence to criminal conduct; and to protect the public from

10   further crimes of the defendant;

11   •   The kinds of sentence and the sentencing range established in the Guidelines;

12   •   Any pertinent policy statement by the Sentencing Commission;

13   •   The need to avoid unwarranted disparities among defendants with similar records
          who have been found guilty of similar conduct; and

14   •   The need to provide restitution to any victims.

15   18 U.S.C. § 3553(a).

16   Based on a consideration of these factors, the United States submits that a time-served sentence

17   is sufficient, but not greater than necessary, to comply with the factors set out above.

18   As an initial matter, the fraud scheme in this case was serious and part of a larger scheme that

19   involved numerous other fraudulent claims and claimants. The overall fraud scheme conceived of and

20   orchestrated by the co-defendant Afanasyev generally escaped detection by the insurance companies

21   who were its victims. Accordingly, that scheme was able to continue for years. Although the defendant

22   played a small part in the overall scheme, his actions served to advance the scheme and resulted in

23   losses to Mercury of more than $76,000. *Cf.* PSR, ¶¶ 8, 10.

24   Second, the scheme regarding the BMW to which the defendant Song has pleaded guilty was not

25   his initial exposure to the fraud scheme. As set forth in the PSR, Song also participated in another

26   scheme to defraud orchestrated by Afanasyev related to a 2017 Cadillac XTS. *See* PSR, ¶ 10.

27   Third, despite the serious nature of the conduct and Song's knowing participation in the fraud, he

28   accepted responsibility relatively early on for his conduct, did not file any pretrial motions, raised good

1 questions (through counsel) about the strength of some of the government's allegations, and is now in

2 agreement with the United States regarding the accurate calculation of the Guidelines. He is gainfully

3 employed and is in a stable relationship. As reflected by the fact that the defendant is a zero-point

4 offender, this is his first conviction. For these reasons and for the reasons reflected in the "Offender

5 Characteristics" section of the PSR, the government hopes that the fact of this prosecution will deter him

6 from engaging in similar conduct in the future, without the need to impose additional custody time.

7   Finally, although the government generally believes that imposing prison sentences in "white

8 collar" cases promotes respect for the law and provides for general deterrence, the other factors in this

9 case (including the defendant's minor role in the overall scheme, his early acceptance of responsibility,

10 and his background and characteristics) warrant a time-served sentence.

11   The Probation Officer has recommended 100 hours of community service. The government

12 believes that this is an appropriate condition that will benefit both the defendant and the community.

13 Accordingly, the government joins in the recommendation that the defendant perform 100 hours of

14 community service.

15 **V.   RESTITUTION**

16   The government has calculated Mercury's pecuniary loss resulting from the scheme to defraud

17 involving the BMW to be $44,475.76. The PSR recommends that the Court use this amount in its

18 restitution order. PSR, ¶ 12. The government joins in that recommendation.

19   Although the cases against Song's main coconspirator, Kirill Afanasyev, have not yet been

20 adjudicated, the government believes that it is likely that Afanasyev *also* will be ordered to pay

21 restitution to Mercury. In order to assist the Clerk in collection and distribution of funds obtained from

22 Song and Afanasyev, the Court should note in the table on the "Criminal Monetary Penalties" page of

23 Song's Judgment that Mercury's "Total Loss" (Column 2) is $44,475.76, and that the "Restitution

24 Ordered" (Column 3) for Song is the same amount. *See*

25 https://www.uscourts.gov/sites/default/files/ao245b.pdf (AO Judgment form). The Court may also wish

26 to note on this page that Song's obligation is joint and several with any other coconspirators yet to be

27 convicted (namely, Afanasyev). *Cf. United States v. Wall*, 349 F.3d 18, 26 (1st Cir. 2003) ("A judgment

28 that specified joint and several liability, up to the maximum amount of the loss, would have eliminated

appellant's uncertainty (and basis for appeal) and provided guidance to those administering the various

related restitution orders. An explicit notation would serve as notice that appellant's obligation may be

discharged in part by others' payments, information that might prevent excessive recovery.") (citing

United States v. Scott, 270 F.3d 30 (1st Cir. 2001).

In the event (perhaps unlikely) that the full amount of Mercury's loss could be collected from

both Song and Afanasyev, notations on the Judgment such as those suggested above will prevent

Mercury from receiving more than its total losses. *See United States v. Nucci*, 364 F.3d 419, 424 (2d Cir.

2004) ("[T]here is no legal basis to permit an award that allows a victim to recover more than his due").

VI. VICTIM ISSUES

Mercury has been notified of the pending sentencing but has not submitted a victim impact

statement. The government will advise the Court in advance of the sentencing hearing if it learns that

any Mercury representative will attend the hearing or wishes to address the Court.

VII. CONCLUSION

For the reasons set forth above, the United States respectfully requests that the Court sentence

the defendant Jay Song to a time-served sentence and order that he serve a three-year term of supervised

release, with all of the conditions recommended by the Probation Office in the PSR (including 100 hours

of community service). The Court should order Song to pay restitution as set forth above, as well as a

$100 special assessment.

DATED: April 18, 2025

Respectfully submitted,

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/s/
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